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March 10, 2017

*Via U.S. Mail and Email*

Mr. Larry Goldzband, Executive Director  
Bay Conservation and Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, CA 94102-7019  
[larry.goldzband@bcdc.ca.gov](mailto:larry.goldzband@bcdc.ca.gov)

**RE: Violations of BCDC Permit No. 2-02 (2002.002.06) Issued to Mark Sanders  
for the Westpoint Marina, Redwood City**

Dear Mr. Goldzband,

This office has been retained by Citizens Committee to Complete the Refuge ("Citizens") to investigate compliance by the Westpoint Marina, in Redwood City California, with permits and plans issued for the marina construction, maintenance and operation. Citizens is dedicated to the protection of the environment, and is particularly concerned about impacts to the Don Edwards San Francisco Bay National Wildlife Refuge, its ecosystem and affected species. The San Francisco Bay Conservation and Development Commission ("BCDC") issued Permit No. 2-02 / 2002.002.06 (hereinafter "Permit 2-02") to permittee Mark Sanders for the Westpoint Marina. BCDC has continuing jurisdiction over the permit and the marina. Citizens Committee to Complete the Refuge writes to urge BCDC to bring the permittee into immediate compliance with the permit issued for the Westpoint Marina.

**Permit Violations Regarding Required Signs, Buoys and Channel Markers.**

Based on this office's review of Permit 2-02 and observations by Citizens Committee to Complete the Refuge, we believe that the permittee is violating Permit 2-02, that these violations are continuous and ongoing, and that without enforcement action these permit violations will not be corrected.

The permittee has failed to install and maintain buoys adjacent to the navigation channel of Westpoint Slough to identify the "No Wake" speed zone. Permit 2-02, Section II. H.

The permittee has failed to delineate the center of the navigation channel of Westpoint Slough for adequate draw, and to discourage boats from deviating out of the navigable channel. Permit 2-02, Section II. H.

The permittee has failed to install and permanently maintain a buoy system 100 feet from the salt marsh on Greco Island along the Westpoint Slough up to its confluence with Redwood Creek. These buoys were required to contain signs that public access into the marshlands of the San Francisco Bay National Wildlife Refuge is prohibited. Permit 2-02, Section II. H.

It appears that the permittee has failed to install and permanently maintain information signs at the boat launch and other public access areas informing the public of the access restrictions on Greco Island and other wetlands in the San Francisco Bay National Wildlife Refuge. Permit 2-02, Section II. I.

Installation and maintenance of the required signs, buoys and channel markers were required as part of Phase I of the Westpoint Marina. The signs must advise boaters of the sensitive nature of the Greco Island area within Westpoint Slough. Permit 2-02, Section I. A. 17. The channel markers in Westpoint Slough from the main Redwood Channel to the entrance of Westpoint Marina must notify boaters of the "no wake zone." Permit 2-02, Section I. A. 18.

The permittee agreed to place and maintain buoys 100 feet from the Greco Island salt marshes with signs that inform the public not to enter the sensitive areas of Greco Island, as well as to install and maintain buoys down the centerline of Westpoint Slough to identify a "no wake" speed zone. The permittee is required to enforce a "no wake zone," and to place and maintain buoys to prevent access to sensitive habitat. Permit 2-02, Section III. F.

These signs, buoys and channel markers were required to "commence" prior to August 15, 2004 or the permit lapses and becomes null and void. Further, the permittee must adequately enforce the permit requirements. Permit 2-02, Section II. O. 5. All signs must be permanently maintained by, and at the expense of, the permittee. Permit 2-02, Section II. B. 5.

According to its website, the Westpoint Marina has been operational since 2008. Yet, today there is only a single buoy in Westpoint Slough, and that sign incorrectly posts a speed limit of "10 mph."<sup>1</sup> There are no centerline buoys delineating the "no wake" zone (maximum 5 mph) and boating channel, and no buoys along Greco Island with signage prohibiting public access into the marshlands of the Refuge.

Further, the enclosed letter from Mr. Matthew Leddy details observations of Westpoint Slough and Westpoint Marina, and attaches photographs of the area. In addition to impacts to the Westpoint Slough mudflats and Greco Island marsh habitat from the wakes of vessels associated with the marina, during 2016 the permittee/marina operator allowed PROP ferry service to utilize the marina for up to four round trips per day. The letter from Mr. Leddy attaches photos of the

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<sup>1</sup> Based on the Bair Island Restoration and Management Plan EIR (August 2004) prepared by the U.S. Fish & Wildlife Service and the California Department of Fish & Game, which states that all motorized vehicles in adjacent Smith and Corkscrew sloughs are subject to "no wake zones and speed limits of a maximum 5 mph," Citizens believes that no speed above 5 mph is permitted in Westpoint Slough.

PROP ferry catamaran traveling at excessive speeds in Westpoint Slough en route to the Westpoint Marina.

#### **BCDC Regulatory Authority for Permit Violations**

The McAteer-Petris Act grants BCDC authority to conduct investigations. California Gov't Code § 66643. Further, Permit 2-02 allows BCDC staff to conduct site visits at the Westpoint Marina to verify that the project is being and has been constructed in compliance with the permit conditions. Site visits may occur during business hours without prior notice. Site visits may also be conducted after business hours with 24-hour notice. Permit 2-02, Section II. BB.

When the BCDC executive director determines that any person has undertaken an activity that may be inconsistent with a permit issued by BCDC, the executive director may issue a cease and desist order which is effective immediately. California Gov't Code § 66637. So too, the BCDC Commission may issue a cease and desist order after a public hearing. California Gov't Code § 66638.

Within 30 days after notification by BCDC staff, the permittee must correct any maintenance deficiencies noted in a staff inspection of the site. Permit 2-02, Section II. B. 5.

Civil liability may be administratively imposed by BCDC for violation of any permit condition or term in an amount up to \$2,000 for each day a violation persists, not to exceed \$30,000 for a single violation. California Gov't Code §§ 66641.5 (e) & 66641.6.

Violation of any of the terms of Permit 2-02 shall be grounds for revocation. BCDC may revoke the permit for such violations after a public hearing is held with reasonable notice to the permittee. If the permit is revoked BCDC may determine, if appropriate, that all or part of any fill or structure placed pursuant to the permit must be removed. Permit 2-02, Section IV. M.

#### **Permit Compliance is Important Because of Potential Adverse Impacts to Listed Species**

Areas directly adjacent to the Westpoint Marina host several federally listed species. Greco Island, across from the marina site, is known habitat for the endangered salt marsh harvest mouse and California clapper rail (Ridgeway's rail), and the threatened western snowy plover,

Permit 2-02 was issued by BCDC based on findings that the San Francisco Bay Plan policies on fish and wildlife provide that specific habitats - needed to conserve, increase or prevent the extinction of any native species, or threatened or endangered species - should be protected, whether in the Bay or on the shoreline behind dikes. Permit 2-02, Section III. F.

Further, when the Westpoint Marina project was first proposed, the San Francisco Bay National Wildlife Refuge expressed concern that the Westpoint Marina would adversely impact endangered species and their habitat - unless specific mitigation measures were implemented. The Refuge Manager's September 18, 2001 comment on the proposed Westpoint Marina Negative Declaration and Use Permit stated:

The Refuge's Greco Island is approximately 500 feet across Westpoint Slough from the project site. The island is one of the most valuable remaining salt water marshes in South San Francisco Bay. In part because of its isolation from human disturbance, the island is one of the few remaining strongholds for the endangered California Clapper Rail and Salt Marsh Harvest Mouse as well as a great diversity of other wildlife...


We are concerned that the marina will 1) increase human presence in Westpoint Slough and disturbance on the Refuge's Greco Island and the project site's tidal marsh, 2) increase erosion of wildlife habitat from boat wakes...

We support the proposal for buoys to be installed down the centerline of Westpoint Slough channel to discourage boats from deviating out of the channel. While this will help keep the larger boats from encroaching on Greco Island and the salt marsh habitat, it may still result in an unacceptable impact on the endangered species because small vessels will still be able to access the island. We recommend that the Marina install and maintain a buoy system 100 feet from the salt marsh in Westpoint Slough with signs stating that the marsh is closed to all public access.

#### **Conclusion**

Thank you for your prompt attention to this matter. As stated above, this office and Citizens are only commencing their investigation of the Westpoint Marina. We may bring further concerns to your attention. However, because of the gravity of the above violations, given the sensitive species habitat and the ongoing nature of the violations, Citizens urge BCDC to act immediately to correct these permit violations.

Sincerely,



Brian Gaffney

cc (via email):

Adrienne Klein, Chief of Enforcement, BCDC [adrienne.klein@bcdc.ca.gov](mailto:adrienne.klein@bcdc.ca.gov)

Anne Morkill, San Francisco Bay National Wildlife Refuge Complex [anne\\_morkill@fws.gov](mailto:anne_morkill@fws.gov)

Gail Raabe, Co-Chair, Citizens Committee to Complete the Refuge [glraabe@sbcglobal.net](mailto:glraabe@sbcglobal.net)

Enclosure